

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: McClintock, et al. Analyst: Kristina E. North Bill Number: SB 1288  
Related Bills: None Telephone: 845-6978 Introduced Date: January 17, 2002  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** "Tax Me More Act"/Allows Taxpayers to Voluntarily Pay Additional Taxes to Fund State Government

### SUMMARY

This bill would create the "Tax Me More Act," which would allow a taxpayer to voluntarily pay additional "taxes" in excess of any tax owed for the year.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to allow taxpayers to pay extra money to fund state government.

### EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2003, and would apply to returns filed on or after that date. The fund would first appear on the 2002 tax returns filed in 2003.

### POSITION

Pending.

#### Summary of Suggested Amendments

Department staff is available to assist with amendments to resolve the concerns discussed in this analysis.

### ANALYSIS

#### FEDERAL/STATE LAW

**Current state tax laws** impose tax on income earned by individuals, estates, trusts, and certain business entities. Tax is imposed upon the entire taxable income of California residents and upon the taxable income of nonresidents derived from sources within California. Every corporation and limited liability company taxable as a corporation either organized, qualified to do business, or doing business in California is subject to the corporate franchise tax. The corporate franchise tax is not imposed on a corporation's income, but instead is measured by a corporation's California source net income. California uses a self-assessment system for the collection of taxes. However, if a taxpayer does not self-assess or fails to pay the appropriate amount of tax, the income tax law authorizes the department to impose or exact those taxes as well as any penalties and interest from individuals or corporations residing or doing business in or receiving income from California.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Alan Hunter for GHG

03/15/02

**Current federal and state tax laws** allow a taxpayer to deduct charitable contributions, including monetary contributions or gifts of property to federal, state, or local governments. Federal tax laws allow a taxpayer to deduct state income taxes. Deductions for charitable contributions may be limited in certain circumstances.

### THIS BILL

**This bill** would allow taxpayers to “tax” themselves and pay an additional amount to fund state government.

**This bill** would expressly require FTB to revise the personal income tax returns and corporation tax returns to include a space for the payment of additional taxes allowed by this bill. FTB also would be expressly required to revise the instructions for the personal income and corporation returns as specified.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

- ◆ The language in this bill is internally inconsistent. While appearing to allow a taxpayer to make a voluntary contribution to fund state government, this bill refers to the contribution as an “additional tax” and includes it in the amount of “new tax owed.” Several issues arise in connection with this language. For example, it is unclear if:
  - (1) penalties or interest could be assessed on the “additional tax” in the instance where a taxpayer fails to pay his or her full tax or pays only part.
  - (2) a taxpayer undergoing an audit, filing a request for refund, or filing an amended return could change his or her mind with regard to the “voluntary tax” and request it back. If so, it is unclear if the refund would bear interest at rates applicable to other income tax refunds. The interest rate paid by the department is higher than industry standards, which could encourage a taxpayer to use the “additional tax” as a savings account.
  - (3) the department could apply the “additional tax” to any unpaid tax the taxpayer has due such as understated tax, prior year liabilities, prior discharged amounts, underestimate of current tax due, or non-tax debt, including child support. The department is currently authorized to offset an overpayment of tax against such items as those listed above. It would be useful if the language were clarified to allow such applications.
  - (4) the “additional tax” would be considered a state tax or a charitable contribution to the state. If it is determined to be a state tax, it would be deductible on the federal return but not on the state return. If it is determined to be a charitable contribution, the taxpayer would be allowed to deduct the “tax” for both federal and state purposes.
- ◆ The department would need to add three additional lines on all tax returns. Also, additional programming would be required to capture this additional data. Increased pre-filing and post-filing questions could result in increased contacts from taxpayers regarding this new “additional tax.”

- ♦ The department is currently authorized to transmit to the General Fund money it receives in payment of taxes. Express language authorizing the department to treat the contributions of “additional tax” in the same manner as tax payments is needed.

## **OTHER STATES’ INFORMATION**

On November 28, 2001, *Arkansas* created by Executive Order the “Tax Me More Fund,” to which donors may voluntarily contribute to the state by sending contributions to a publicized post office box address in Little Rock, Arkansas. The fund is administered by the state’s Department of Finance and Administration. The names of the donors and the amounts of donations are supposed to be released to the public once a week. The donor can deduct this donation as a charitable contribution under federal law.

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not have a comparable voluntary tax allowed by this bill. The laws of these states were reviewed because of similarities in the tax laws of these states to California’s income tax laws.

## **FISCAL IMPACT**

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved, but could be significant if new system programming, forms design, and increased contact resulted from the clarification.

## **ECONOMIC IMPACT**

### Revenue Estimate

The revenue gain associated with this bill is projected to be insignificant, less than \$100,000 annually. This projection is based on information from the Department of the Treasury as well as from other states pertaining to voluntary payments made by taxpayers.

## **ARGUMENTS/POLICY CONCERNS**

According to *Black's Law Dictionary*, the essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority (*Michigan Employment Sec. Commission v. Patt* (1966) 4 Mich. App 228, 144 N.W.2d 663,665). This bill would be contrary to this generally accepted understanding of what constitutes a “tax.”

## **LEGISLATIVE STAFF CONTACT**

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